

LEGAL NEWSLETTER

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- Mgaloblishvili, Kipiani, Dzidziguri (MKD) Law Firm

Contents:

Secondary Legislation

International Treaties

Secondary Legislation

- **Rules for issuing the Licenses and the License Terms in the Insurance Field**, as approved by Resolution No: 183 of the Government of Georgia, dated 14 October 2005, regulates licensing terms and conditions and below is a brief summary of the said act:
- **Licensing Insurance Activity**
- The license shall be issued only for the following activities:
- Life Insurance;
- Insurance (excluding Life Insurance);
- Reinsurance (Article 1(1) of the Resolution of Government of Georgia regarding the License Issuance Rule and License Terms in the Field of Insurance).
- **Licensee**
- License for the Insurance Activity may be only issued to the legal persons organized in the form of *Limited Liability Company* and *Joint Stock Company*.
- **Licensors**
- License is issued by *the Georgian State Supervision Agency of Insurance* (Legal Person of Public Law).
- **Procedure for issuing the License for Insurance Activity**
- The License for the Insurance Activity shall be issued by *the simple administrative procedure* (Article 8 of Law of Georgia on Licenses and Permits).
- **(1) Filing Documents**
- To obtain the License for Insurance Activity the following documents are to be submitted to the Georgian State Supervision Agency of Insurance:
- Application in writing;
- The application shall contain:
 - the name of the agency to be applied to (the Georgian State Supervision Agency of Insurance);
 - the name and domicile of the applicant company;
 - requirement;
 - the type of the License of Activity the license-seeker applies for;
 - the date of the application submission and the signature of the applicant;
 - the list of the documents attached to the application.
- The application shall be appended with:
- The Extracts from the State Register;
- The document proving the payment of the license fee;
- The relevant document issued by the bank proving the transfer of the part of the charter capital to be covered with money to the bank account;
- The relevant document issued by the auditor (audit firm) proving the covering of the minimal charter capital with money or otherwise.

Secondary Legislation

In case of any changes to the documents listed above the license-seeker shall notify the licensor in writing thereon and submit the relevant documents in 7 days from the moment the relevant change was made.

- ***Non-governmental Pension Insurance***

- License-seeker willing to exercise the Non-governmental Pension Insurance belonging to the Life Insurance shall submit the Non-governmental Pension Scheme Rules in addition.

- The License for Life Insurance including Non-governmental Pension Insurance shall be issued after the Non-governmental Pension Schemes are expertized and registered by Georgian State Fund of Social Insurance, which shall be obtained by the Licensor based on the Single Window Principle. Nevertheless, the license-seeker is entitled to submit the relevant expert's statement himself/herself (Article 1(5) of the Resolution of Government of Georgia regarding the License Issuance Rule and License Terms in the Field of Insurance).

- **(2) Decision Making**

- The issuer of the license shall make a decision on issuing a license within 20 days after submission of the application.

- If the decision on issuance of or refusal to issue the license is not made within the said term, the license shall be deemed to have been issued.

- After expiration of the term for issuing the license, the license-seeker may request a License Certificate. The issuer of the license shall forthwith issue the License Certificate (Article 26(10 and 11) of the Law of Georgia on Licenses and Permits).

- **Refusal to Issue a License**

- The license shall not be issued if the documents submitted to obtain the license do not comply with the terms defined for exercising the insurance activity.

- In case of refusal to issue a license the licensor shall immediately notify the license-seeker in writing the motivated refusal (Article 3 of the Resolution of Government of Georgia regarding the License Issuance Rule and License Terms in the Field of Insurance).

- **Appealing Against the Refusal to Issue a License**

- The decision of the issuer of the license on refusal to issue a license may be appealed against with a higher authority (official) or in court (Article 12 of the Law of Georgia on Licenses and Permits).

Secondary Legislation

- **Entry into Force and Validity Term of the License of Activity**

If the decision is made to issue the license of activity, the license-seeker may engage in the licensed activity by the relevant administrative act before obtaining the License Certificate.
- If the licensor fails to make a decision on the issuance of or refusal to issue the license within the term provided by law, the license-seeker may engage in the licensed activity only after obtaining the License Certificate.
- The licensor shall issue the relevant License Certificate along with making its decision on approval of the application.
- License is issued for an unlimited term (Article 16 of the Law of Georgia on Licenses and Permits).
- **Control over the Fulfillment of the License Terms**
- The licensor (the Georgian State Supervision Agency of Insurance) shall exercise control over the license holder's fulfillment of the license terms.
- The licensor shall exercise control only by a random examination of the fulfillment of the license terms or/and regular reporting from the license holder. The licensor may exercise control over the fulfillment of the license terms only once a calendar year (Article 21(2 and 10)
- of the Law of Georgia on Licenses and Permits).
- **Revocation of the License**
- **(a) The grounds for the revocation of the license are:**
 - Request of the license holder;
 - Winding up of the license holder;
 - Failure to fulfill the license terms provided by law (Article 22(7) of the Law of Georgia on Licenses and Permits).
- **(b) Failure to fulfill the license terms provided by law:**
- For failure to fulfill the license terms provided by law, the license holder shall be fined in manner provided by law.
- Irrespective of holding liable, the license holder's failure to fulfill the license terms within the fixed term shall result in the fine of a three-fold amount.
- If the license holder fails to comply with the license terms prior to the expiration of the term fixed after imposition of a three-fold fine, the imposed fine shall be tripled.
- If irrespective of the liability imposed under Paragraphs 1, 2 and 3 the license holder does not fulfill the license terms, the licensor shall make a decision on revocation of the license.
- In the decision on revocation of the

Secondary Legislation

- license, the licensor shall substantiate the necessity for application of this measure of liability (Article 22 of the Law of Georgia on Licenses and Permits).
- ***The obtaining of the License of Activity is not needed if:***
- The licensed activity is conducted by a legal entity, a branch of the said legal entity may also carry out the same activity (Article 9(16) of the Law of Georgia on Licenses and Permits);
- The organizations registered in the Member States of Organization for Economic Co-operation and Development exercise the insurance or reinsurance activity and they will found affiliation (representative office) in Georgia as defined by law, these affiliations carry out the licensed activity without obtaining the relevant license based on the license of founder organizations;
- The legal status of the license hold by the founder organization is the same as the license issued pursuant to Georgian legislation;
- Person already holding the license in other type of insurance activity may exercise reinsurance activity without obtaining the relevant license (Article 1 (8 and 9) of the Resolution of Government of Georgia regarding the License Issuance Rule and License Terms in the Field of Insurance).
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- **Pursuant to the Decree N 127 of Government of Georgia on Rules for Maintenance of Entrepreneurial Register and for the Competent Registering Tax Bodies, dated 4 august 2005**, the following tax bodies of the Tax Department of the Ministry of Finance are entitled to conduct registration of enterprises:
 - Tbilisi Tax Inspection;
 - Batumi Tax Inspection;
 - Rustavi Tax Inspection;
 - Kutaisi Tax Inspection;
 - Poti Tax Inspection;
 - Gori Tax Inspection;
 - Telavi Tax Inspection;
 - Akhalziche Tax Inspection;
 - Abkhazia Tax Inspection.
- Relevant tax body is obliged to register enterprise within 3 days after submission of the documentation required pursuant to the legislation. If the registration is not completed within the mentioned period of time, the enterprise shall to be deemed as registered.
- The refusal grounds shall to be notified to the applicant not later than 2 days after submitting the documents.
- If the application on registration and the submitted documents do not meet the relevant requirements, the authorized body gives the applicant 15 day grace period to remedy such defect and resubmit documents.

Secondary Legislation

- Refusal of the tax body to register an enterprise may be appealed in court.
In addition, tax bodies are obliged to issue Extract on enterprise within 3 days upon submission of written application. Such Extract is valid for 15 days after issuance and contains relevant data of company such as: name, registered office, shareholders, share capital, directors, supervisory council, trade representatives.
- **Order N 104 Minister of Foreign Affairs on Rules of Issuing of Georgian Visa, dated 5 August 2005** regulates issuance, extension, replacement, restoring and cancellation of visas. The following types of visas are defined under the said order:
 - Diplomatic Visa;
 - Business Visa;
 - General Visa;
 - Entrance- Exit Visa;
 - Exit Visa;
 - Transit Visa;
 - Single Visa;
 - Double Visa;
 - Multiple Visa.
- A visa is issued by the authorized body upon submission of the relevant application and travel document. Other documents, which
 - prove the purpose of visit, a person's physical conditions etc. may be also required.
 - The accompanying persons, which are mentioned in the travel document, may be also registered in the visa.
 - Based on the application of the person, each type of visa may also be prolonged by the Consular Department of the Minister of foreign Affairs pursuant to Article 19 of the Law of Georgia on Temporary Entry, Stay and Exit of Aliens in Georgia.
- **According to the Decree N 154 of Georgian Government on Issuance of Environmental Permits, dated 1 September 2005** for the issuance of environmental permit by the Ministry of Environment and Protection of Natural Recourses, the conclusion of state ecological expertise is obligatory, which is conducted by the Ministry according to the Law of Georgia on State Ecological Expertise.
- Environmental permit is issued within 20 days after submitting the application according to the statutory procedures. If the permit is not issued within this period of time and no refusal is conferred the permit shall be deemed as issued.
- There are three categories of permits:

Secondary Legislation and International Treaties

- First category is required for the activities, determined under paragraph 2 of Article 4 of the Law on Environmental Permits;
- Second category is required for the activities, determined under paragraph 3 of Article 4 of the Law on Environmental Permits;
- Third category is needed for the activities, determined in paragraph 4 of the Article 4 of the Law on Environmental Permits.
- **Order N1-1/989 of the Minister of Economic Development regarding Standard Forms For Hypothecation Agreements regarding privatizing State Non-agricultural Lands dated 12 September 2005** introduces standard forms of hypothecation agreements to be used in respect of privatizing state non-agricultural lands.
- **Decree N 166 of the Government of Georgia regarding the disclosure of the Problems of Foreign Investors dated 23 September 2005** establishes the committee for solution of the issues concerning investors. The Committee shall consider existing problems and prepare relevant recommendations.
- **INTERNATIONAL TREATIES**
- Georgian Parliament has ratified international treaty with **the People's Republic of China on Preventing Double Taxation and Evasion from Taxes on Income and Capital Gains** by resolution No.1905-III dated 16 September 2005.
- Georgian Parliament has ratified international treaty with **the Republic of Austria on Preventing Double Taxation on Income and Capital Gains** by resolution No.1917-III dated 11 October 2005.
- Georgian Parliament has ratified international treaty with **the Republic of Latvia and the Republic of Estonia on the Co-operation and Mutual Assistance in the Customs Field**. by resolutions No:1653-Is and 1654-Is dated 16 June 2005.

Mgaloblishvili, Kipiani, Dzidziguri (MKD) law firm was founded in November 1996. It operates as a general partnership and is recognized as well-established, respected leading law firm in Georgia with major national, regional and international clients.



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